

FEB 15 2010

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

COASTAL ENVIRONMENTAL RIGHTS  
FOUNDATION, a California non-profit  
corporation,

Plaintiff,

vs.

CALIFORNIA METAL SERVICES, INC., a  
California corporation

Defendant.

Civil Case No. 3:18-cv-00304-LAB-NLS

**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

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**WHEREAS**, on February 8, 2018, CERF filed a complaint against CMS in the United States

District Court, Southern District of California alleging violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Storm Water Permit at the CMS Facility ("Complaint");

**WHEREAS**, CERF alleges CMS to be in violation of the substantive and procedural requirements of the Storm Water Permit and the Clean Water Act with respect to the CMS Facility;

**WHEREAS**, CMS denies all allegations in the Notice Letter and Complaint relating to the CMS Facility;

**WHEREAS**, CERF and CMS have agreed that it is in the Settling Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint with respect to the CMS Facility without further proceedings

**WHEREAS**, all actions taken by CMS pursuant to this Consent Decree shall be made in compliance with all applicable federal and state laws and local rules and regulations.

**NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTling PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a);

2. Venue is appropriate in the Southern District of California pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the CMS Facility is located within this District;

3. The Complaint states claims upon which relief may be granted pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

4. Plaintiff has standing to bring this action;

5. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of this Consent Decree for the life of the Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

**I. OBJECTIVES**

6. It is the express purpose of the Settling Parties entering into this Consent Decree to further the objectives set forth in the Clean Water Act and to resolve those issues alleged by CERF in its Complaint. In light of these objectives and as set forth fully below, CMS agrees to comply with the provisions of this Consent Decree and to comply with the requirements of the Storm Water Permit and

1 all applicable provisions of the Clean Water Act.

2 **II. AGENCY REVIEW AND TERM OF CONSENT DECREE**

3 7. Plaintiff shall submit this Consent Decree to the United States Department of Justice and  
4 the EPA (collectively “Federal Agencies”) within three (3) days of the final signature of the Settling  
5 Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five  
6 (45) days after receipt by both agencies, as evidenced by written acknowledgement of receipt by the  
7 agencies or the certified return receipts, copies of which are to be provided to CMS upon request. In the  
8 event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree to meet  
9 and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable amount  
10 of time.

11 8. The term “Effective Date” as used herein shall be forty-five days after this Consent  
12 Decree is submitted to the Federal Agencies for approval or the date upon which the last Federal Agency  
13 approves this Consent Decree, whichever is earlier. Plaintiff shall promptly notify CMS of the date of  
14 submission and approval.

15 9. This Consent Decree will terminate three (3) years from the Effective Date, unless prior  
16 to the termination date either Party has invoked the dispute resolution provisions of this Consent Decree  
17 and there is an ongoing, unresolved dispute regarding either Party’s compliance with this Consent  
18 Decree, in which case the Consent Decree will terminate upon final resolution of the dispute pursuant to  
19 the dispute resolution provisions contained herein.

20 **III. COMMITMENTS OF THE SETTLING PARTIES.**

21 **A. Storm Water Pollution Control Best Management Practices.**

22 10. It is the express purpose of the Settling Parties entering into this Consent Decree to  
23 further the objectives set forth in the Clean Water Act and to resolve those issues alleged by CERF in its  
24 Complaint. In light of these objectives and as set forth fully below, Defendant agrees, *inter alia*, to  
25 comply with the provisions of this Consent Decree, the requirements of the Storm Water Permit, and all  
26 applicable provisions of the CWA.

27 11. In addition to maintaining the current structural and non-structural Best Management  
28 Practices (“BMPs”) described in the CMS Facility’s Storm Water Pollution Prevention Plan

1 (“SWPPP”), Defendant shall develop and implement BMPs necessary to comply with the provisions of  
2 this Consent Decree and the Storm Water Permit, including but not limited to those that achieve the Best  
3 Available Technology Economically Achievable (“BAT”) and the Best Conventional Treatment  
4 Technology (“BCT”) and to comply with the Storm Water Permit’s Receiving Water Limitations.

5 12. The list of BMPs that CMS agrees to develop and/or implement for the CMS Facility as  
6 part of this Consent Decree is attached hereto as Exhibit A.

7 **B. Discharge Locations and Storm Water Sampling.**

8 13. Discharge Locations. The current and future storm water sample locations for the CMS  
9 Facility are identified in Exhibit B. Should the future storm water sample locations change from what is  
10 presently depicted on Exhibit B, CMS will provide CERF with updated Exhibits.

11 14. Sampling. The following storm water monitoring procedures shall be implemented at the  
12 CMS Facilities:

13 14.1. Frequency. During the life of this Consent Decree, Defendant shall collect  
14 samples from all discharge locations at the CMS Facility from a minimum of  
15 four (4) “qualified storm events” that occur in a reporting year such that  
16 Defendant collects two (2) samples during the first half of the reporting year and  
17 two (2) samples during the second half of the reporting year. A “qualified storm  
18 event” or “QSE” is a storm event that produces a discharge from at least one  
19 drainage area and is preceded by forty-eight (48) hours with no discharge from  
20 any drainage area. If, prior to March 1, Defendant has collected samples from  
21 two (2) or fewer qualified storm events, Defendant shall collect samples during  
22 as many qualified storm events as necessary until a minimum of 4 storm events  
23 have been sampled for the reporting year. No two (2) samples may be from the  
24 same storm event.

25 14.2. Contained or Stored Storm Water. To the extent water is stored or contained,  
26 Defendant shall sample the stored or contained water at the CMS Facility before  
27 it is released even if not during operating hours.

28 14.3. Parameters. Defendant shall analyze each storm water sample collected from a

Sample Location for the contaminants set forth in the Table 1 Numeric Limits.

14.4. Laboratory. A laboratory accredited by the State of California shall analyze all samples collected pursuant to this Consent Decree.

14.5. Detection Limits. The laboratory shall use analytical methods adequate to detect the individual contaminants at or below Table 1 Numeric Limits.

14.6. Hold Time. All samples collected from the CMS Facility shall be delivered to the laboratory as necessary to ensure that sample "hold time" is not exceeded for each contaminant sampled. For field measurements, such as pH, Defendant shall use portable instruments, and not pH paper, which shall be calibrated and used according to manufacturers' instructions and approved industry methodology, i.e., 40 C.F.R., Part 136.

14.7. Results. Defendant shall request that sample analysis results be reported to them within ten (10) days of laboratory receipt of the sample, or as soon as possible without incurring "rush" charges.

14.8. Reporting. Defendant shall provide CERF with the complete laboratory results, including a copy of the Quality Assurance/Quality Control and the laboratory report for all samples described and taken in accordance with the samples identified in paragraphs 14.1 and 14.2 collected at the CMS Facility, within five (5) business days of receiving the results.

**C. Reduction of Pollutants in Discharges.**

15. Contaminant Reduction. Unless otherwise provided by this Consent Decree, Defendant shall develop and implement BMPs to reduce pollutants in storm water discharges from the CMS Facility to levels below those in Table 1 ("Numeric Limits").<sup>1</sup>

**Table 1. Numeric Limits**

Pollutant	Values
Total Suspended Solids	100 mg/L
Total Zinc*	0.379 mg/L
Total Copper*	0.050 mg/L
Oil and Grease	15 mg/L

<sup>1</sup> The Numeric Limits for metals marked with asterisk are hardness dependent.



Pollutant	Values
Total Recoverable Aluminum	0.750 mg/L
Total Recoverable Iron <sup>2</sup>	0.3 mg/L
Nitrate + Nitrite Nitrogen	0.68 mg/L
pH	6.5-8.5 s.u.
Total Lead*	0.281 mg/L
Total Selenium	.005 mg/L
Manganese	.05 mg/L
Phosphorus <sup>3</sup>	.1 mg/L

16. Action Plan for Table 1 Exceedances. The Settling Parties recognize that CMS is in the process of designing, permitting and constructing storm water treatment systems intended to address storm water discharges at the CMS facility. Therefore, while CMS will continue to comply with the terms of the Storm Water Permit, the terms of these paragraphs 16-18 will apply starting October 31, 2018 or nine months after the issuance of a Conditional Use Permit, Grading Permit and Building Permit by the City of Escondido, whichever comes later provided, however, the Settling Parties agree that the inability of the contractor to deliver the building described in Provision 5.a of Exhibit A shall be considered a force majeure condition subject to Provision 41 of this agreement. If Defendant's monitoring reveals an exceedance of the numeric limits specified in Table 1 for any pollutant after September 1, 2019 Defendant shall submit an Action Plan as discussed in this paragraph, including its subparagraphs.<sup>4</sup> Any Action Plan required by this paragraph, shall be prepared by a QISP and must be submitted to Plaintiff by June 1, or within thirty (30) days of Defendant's receipt of sampling data showing the exceedance of the limit for the same pollutant listed in Table 1 Numeric Limits, whichever is earlier. Submitting an Action Plan that does not include all of the requirements in this paragraph will be considered a missed deadline.

16.1. Action Plan Requirements. An Action Plan shall include at a minimum: (1) the identification of the contaminant(s) discharged in excess of the numeric value(s);

<sup>2</sup> Not to be exceeded more than 10% of the time unless studies of the specific water body in question clearly show that water quality objective changes are permissible and changes are approved by the Regional Board.

<sup>3</sup> Not to be exceeded more than 10% of the time unless studies of the specific water body in question clearly show that water quality objective changes are permissible and changes are approved by the Regional Board.

<sup>4</sup> The Action Plan discussed in this Consent Decree is separate and distinct from any "Action Plan" discussed in the Storm Water Permit.

(2) an assessment of the source of each contaminant discharged in excess of the numeric value(s); (3) (a) the identification of additional BMPs, including either preventing the exposure of pollutant and pollutant sources to storm water and/or further treatment of storm water prior to discharge from the CMS Facility that will reduce pollutant concentrations to those below Table 1 Numeric Limits or, (b) for those contaminants where there is no California Toxics Rule or other established receiving water limitation, the identification of and demonstration that BMPs CMS has developed and implemented achieve BAT/BCT, and that further BMPs will not achieve the numeric values established in Table 1; and (4) time schedules for implementation of the proposed BMPs (if any). The time schedule(s) for implementation of additional BMPs shall ensure that all BMPs are implemented as soon as possible but no more than ninety (90) days after CERF provides CMS comments on the Action Plan, unless the Settling Parties agree on a later date based on the time needed to design, permit, procure, and install the necessary equipment, or implementation within the required time period is not possible due to Force Majeure, as defined in paragraph 41, below. CERF will not unreasonably withhold agreement to extend the deadline, as needed. Any disputes over the deadline for implementation of additional BMPs identified in an Action Plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Article VI below.

16.2. Action Plan Review. CERF shall have thirty (30) days upon receipt of Defendant's Action Plan to provide Defendant with comments on the Action Plan. Within twenty-one (21) days of Defendant's receipt of CERF's comments on the Action Plan, Defendant shall consider CERF's comments and shall either incorporate them into the Action Plan or, if Defendant declines to accept one or more of CERF's comments, provide CERF with a written explanation of the grounds for rejection.

16.3. Disputes regarding the adequacy of a particular BMP shall not impact the



1 schedule for implementing any other BMP set forth in the Action Plan. Any  
2 disputes as to the adequacy of the Action Plan shall be resolved pursuant to the  
3 dispute resolution provisions of this Consent Decree, set out in Article VI below.

4 16.4. Defendant can discontinue storm water sample analysis of a parameter listed in  
5 Table 1 if the concentration of the parameter for each discharge location and  
6 drainage area (a) does not exceed the Table 1 Numeric Limit in at least four (4)  
7 consecutive storm water samples, or (b) is not detected in the initial one (1)  
8 storm water sample for parameters in which no potential pollutant sources are  
9 present on the CMS site, from a QSE occurring after the Effective Date of this  
10 Consent Decree.

11 16.5. The provisions of this Consent Decree will not apply if the CMS facility applies  
12 for and receives approval from the Regional Water Quality Control Board for a  
13 "No Exposure Certification" as that term is defined by the Storm Water Permit,  
14 provided that facility remains in full compliance with the requirements of the No  
15 Exposure Certification for the remainder of the term of this Consent Decree.  
16 Provided, however, that CMS shall notify Plaintiff ten (10) business days prior to  
17 the filing of a No Exposure Certification of CMS's intent to do so.

18 16.6. The provisions of this Consent Decree will not apply if the CMS facility applies  
19 for and receives approval from the Regional Water Quality Control Board for a  
20 "Notice of Termination" as that term is defined by the Storm Water Permit.  
21 Provided, however, that CMS shall notify Plaintiff thirty (30) days prior to the  
22 filing of a Notice of Termination of CMS's intent to do so.

23 16.7. The State Water Resources Control Board is in the process of considering certain  
24 amendments to the Permit, which may include certain revised standards for  
25 industrial facilities which retain the 85<sup>th</sup> Percentile Storm Event. Should the  
26 State Water Resources Control Board adopt such an amendment, CMS may, at  
27 its sole discretion adopt the provisions of that amendment in lieu of any  
28 conflicting provisions contained herein.

1           17. Defendant shall contact Plaintiff to request an extension of any deadline set forth in this  
2 Consent Decree, if necessary, at least fourteen (14) days prior to the deadline at issue. Failure to request  
3 an extension in this timeframe will be considered a missed deadline. Plaintiff's consent to Defendant's  
4 requested extension shall not be unreasonably withheld.

5           18. Defendant shall revise its SWPPP and/or Monitoring & Reporting Plan ("M&RP") as  
6 applicable within thirty (30) days of receipt of Plaintiff's Action Plan comments to reflect the changes  
7 and/or additional BMPs set forth in the Action Plan. Defendant shall notify CERF in writing when the  
8 final Action Plan has been completely implemented, and the SWPPP and/or M&RP have been revised.

9           **D. Visual Observations.**

10           19. All visual observations shall be conducted in accordance with the terms of the Storm  
11 Water Permit and this Consent Decree, and shall include at least the following:

12                   19.1. Storm Water Discharge Observations. During the life of this Consent Decree,  
13 Defendant shall conduct visual observations at each point where storm water is  
14 discharged during each Qualifying Rain Event.

15                   19.2. Non-Storm Water Discharge Observations. During the life of this Consent  
16 Decree, Defendant shall conduct monthly non-storm water visual observations at  
17 each discharge point.

18           20. Defendant shall maintain logs of the visual observations, which shall be available for  
19 review on site for a period of 5 years in conformance with the Storm Water Permit, and shall make these  
20 records available for Plaintiff's review via email within two business days of the request.

21           **E. Employee Training.**

22           21. Within forty-five (45) days of the Effective Date, Defendant shall conduct additional  
23 employee training in order to familiarize employees at the CMS Facility with the requirements of the  
24 Storm Water Permit and this Consent Decree. The training program shall include use of written training  
25 materials needed for effective implementation of the training program. Defendant shall also ensure that  
26 there are a sufficient number of employees assigned to implement the BMPs and conduct other  
27 compliance activities required by the Storm Water Permit and this Consent Decree, and that these  
28 employees are properly trained to perform the required activities.

1           22.     The training program shall require at least the following:

2               22.1.   Non-Storm Water Discharge Training. Defendant shall train employees on the  
3                               Storm Water Permit's prohibition of non-storm water discharges, so that  
4                               employees know what non-storm water discharges are, which can result from  
5                               improper practices that may produce non-storm water discharges at the CMS  
6                               Facility, and how to detect and prevent them;

7               22.2.   BMP Training. Defendant shall train employees on BMP implementation and  
8                               maintenance to ensure that BMPs are implemented effectively to prevent or  
9                               minimize the exposure of pollutants to storm water, to prevent or minimize the  
10                              discharge of contaminated storm water, and to ensure the proper treatment of  
11                              storm water at the CMS Facility;

12              22.3.   Sampling Training. Defendant shall designate an adequate number of employees  
13                              or consultants to ensure the collection of storm water samples from each  
14                              discharge location as required by this Consent Decree and/or the Storm Water  
15                              Permit. The training shall include the proper sampling protocols, including chain  
16                              of custody requirements, to ensure storm water samples are properly collected,  
17                              stored, and submitted to a certified laboratory.

18              22.4.   Visual Observation Training. Defendant shall provide training to all individuals  
19                              performing visual observations at the CMS Facility pursuant to this Consent  
20                              Decree and/or the Storm Water Permit that includes when visual observations are  
21                              required, the different types of visual observations required, and instruction on  
22                              proper record keeping under the Storm Water Permit.

23           23.     Training shall be provided on an annual basis, or as otherwise required to ensure  
24                      compliance with the terms of this Consent Decree, by a private consultant or a representative of  
25                      Defendant who is familiar with the requirements of this Consent Decree and the Storm Water Permit.  
26                      The training shall be repeated as necessary to ensure that employees are familiar with the requirements  
27                      of this Consent Decree, the Storm Water Permit, and the CMS Facility's SWPPP and M&RP, as  
28                      appropriate to the particular employee's job descriptions. Any new employee who is responsible for

1 implementation of any portion of the SWPPP, the M&RP, or compliance with other terms of the Storm  
2 Water Permit or Consent Decree shall receive training within ten (10) business days after being hired, or  
3 before being responsible for compliance with the terms of the Storm Water Permit or Consent Decree.

4 24. Defendant shall maintain training records to document compliance with Article II.E of  
5 this Consent Decree and shall make these records available for Plaintiff's review at the CMS Facility  
6 upon request. The Training Program shall be specified in the SWPPP and Defendant shall modify the  
7 SWPPP as necessary to reflect the training program required by this Consent Decree.

8 **F. Storm Water Pollution Prevention Plan and Monitoring and Reporting Plan.**

9 25. Within sixty (60) days of the Effective Date of this Consent Decree, Defendant shall  
10 revise the CMS Facility's SWPPP and/or M&RP as applicable to include:

11 25.1. All BMPs that are currently utilized at the CMS Facility;

12 25.2. All BMPs identified and developed pursuant to this Consent Decree and/or the  
13 Storm Water Permit;

14 25.3. The specific individual(s) or positions responsible for compliance with the Storm  
15 Water Permit and this Consent Decree;

16 25.4. A detailed site map that includes at a minimum all information required by the  
17 Storm Water Permit and this Consent Decree;

18 25.5. A description of each industrial activity, all potential pollutant sources, and each  
19 potential pollutant associated with each industrial activity and/or pollutant  
20 source;

21 25.6. Incorporate the requirements of the Storm Water Permit and this Consent  
22 Decree.

23 26. Additional and Ongoing Revisions to SWPPP and/or M&RP. Defendant shall revise the  
24 SWPPP and/or M&RP if there are any changes in the CMS Facility's operations that may possibly affect  
25 the quality of storm water discharges at the CMS Facility, including but not limited to changes to storm  
26 water discharge point(s)/sample location(s) or changes or additions to the BMPs at the CMS Facility  
27 resulting from an Action Plan.

28 27. Commenting on Revised SWPPP and/or M&RP. Defendant shall submit any revised

1 SWPPP and/or M&RP to CERF within five (5) days of completion.

2           27.1. For any SWPPP or M&RP revisions that are not the result of an Action Plan,  
3 CERF shall provide comments, if any, to Defendant within thirty (30) days of receipt  
4 of any revised SWPPP and M&RP. Within thirty (30) days of receiving comments  
5 from CERF, Defendant shall incorporate CERF's comments into any revised SWPPP  
6 and/or M&RP or shall justify in writing why any comment is not incorporated. Any  
7 disputes as to the adequacy of the SWPPP and/or M&RP shall be resolved pursuant  
8 to the dispute resolution provisions of this Consent Decree, set out in Article VI  
9 below.

10 **IV. COMPLIANCE MONITORING AND REPORTING**

11           28. Site Inspections. Each Reporting Year for the life of this Consent Decree, Plaintiff and its  
12 representatives may conduct up to two (2) noticed site inspections per Reporting Year. The site  
13 inspections shall occur during normal business hours, and Plaintiff shall provide Defendant with three  
14 (3) days' notice of an intended inspection. If a Wet Season inspection is noticed, CERF will continue to  
15 follow the weather forecast, and will confirm the Wet Season inspection at least twenty-four (24) hours  
16 prior to the start of the inspection in an effort to ensure CERF conducts its inspection during a QSE.  
17 CERF will make efforts to conduct its inspection during a QSE, but a lack of a QSE will not prevent  
18 CERF from conducting its inspection. During inspections, Plaintiff's representatives will wear safety  
19 goggles, hard hats, vests, and appropriate clothing and footwear and remain in the presence of  
20 Defendant's representatives at all times. Plaintiff's inspection team shall consist of no more than three  
21 (3) persons each of whom shall have executed the liability release attached hereto as Exhibit C.

22           29. During the site inspection, Plaintiff and/or its representatives shall be allowed access to  
23 the CMS Facility's SWPPP, M&RP, and other monitoring records, reports, and all sampling data  
24 produced in accordance with the samples identified in paragraphs 14.1 and 14.2 of this Consent Decree  
25 for the CMS Facility. In addition, during the site inspection, Plaintiff and/or its representatives may  
26 collect split samples of discharges from QSEs, even if outside of the first four hours of discharge, from  
27 the CMS Facility. Plaintiff shall provide CMS with properly preserved split samples. Any samples  
28 collected by Plaintiff shall be submitted to a certified California laboratory for analysis. Any onsite



1 measurements such as pH shall be taken by a properly trained operator with properly calibrated  
2 instruments. CMS, shall have an opportunity to take concurrent measurements using its own equipment.  
3 Copies of the complete laboratory reports shall be provided to Defendant within five (5) business days  
4 of receipt. Plaintiff shall bear all costs of inspection, sampling, and analysis.

5 30. Reporting and Documents. During the life of this Consent Decree, Defendant shall copy  
6 Plaintiff on all documents related to water quality at the CMS Facilities that are submitted to the  
7 Regional Board, the State Board, and/or any State or local agency or municipality. Such reports and  
8 documents shall be provided to Plaintiff concurrently as they are sent to the agencies and/or  
9 municipalities. Any correspondence related to Defendant's compliance with the Storm Water Permit or  
10 storm water quality received by Defendant from any regulatory agency, State or local agency, county or  
11 municipality shall be provided to CERF within ten (10) days of receipt by Defendant.

12 31. Compliance Monitoring and Oversight. CMS shall pay a total of seven thousand five  
13 hundred dollars (\$7,500) to compensate CERF for costs and fees to be incurred for monitoring the CMS  
14 Facility's compliance with this Consent Decree. Payment shall be made within five (5) business days of  
15 the Effective Date payable to Coastal Environmental Rights Foundation via certified U.S. Mail or  
16 commonly accepted carrier to 1140 South Coast Highway 101 Encinitas, California 92024.

17 32. Action Plan Payment. CMS shall pay three thousand dollars (\$3,000) per year for  
18 CERF's reasonable costs to review any Action Plan submitted. Payment shall be made within five (5)  
19 business days of the submittal of an Action Plan and payable to Coastal Environmental Rights  
20 Foundation via certified U.S. Mail or commonly accepted carrier to 1140 South Coast Highway 101  
21 Encinitas, California 92024.

22 **V. Environmental Project, Reimbursement of Litigation Fees and Costs, and Stipulated**  
23 **Payments**

24 33. Environmental Project. To remediate the alleged environmental harms resulting from  
25 non-compliance with the Storm Water Permit alleged in the Complaint, CMS agrees to make a payment  
26 totaling ten thousand (\$10,000) to San Diego Coastkeeper to fund environmental project activities that  
27 will reduce or mitigate the impacts of storm water pollution from industrial activities on the Southern  
28 California Bight and its tributaries. Payment shall be made payable to: "San Diego Coastkeeper" via



1 certified U.S. Mail to San Diego Coastkeeper, 2825 Dewey Road, Suite 207, San Diego California  
2 92106 within ten (10) business days of the Effective Date.

3 34. Reimbursement of Coast Law Group's Fees and Costs. CMS shall pay a total of twenty  
4 thousand (\$20,000) to Coast Law Group, LLP to reimburse Coast Law Group, LLP for its investigation  
5 fees and costs, expert/consultant fees and costs, and reasonable attorneys' fees incurred as a result of  
6 investigating and preparing the lawsuit and negotiating this Consent Decree. Payments shall be made  
7 within ten (10) business days of the Effective Date and payable to: Coast Law Group, LLP, Attn: Livia  
8 Borak Beaudin via certified U.S. Mail or commonly accepted carrier to 1140 South Coast Highway 101  
9 Encinitas, California 92024. Payment shall be made within five (5) business days of the Effective Date.

10 35. Stipulated Payments: Defendant shall make a remediation payment of One Thousand  
11 Five Hundred dollars (\$1,500.00) for each missed deadline included in this Consent Decree. Defendant  
12 shall have thirty (30) days to cure any missed deadline or, in the alternative, invoke the dispute  
13 resolution procedures set forth below. Unless dispute resolution procedures have been invoked,  
14 Defendant agrees to make the stipulated payment within thirty (30) days of a missed deadline to San  
15 Diego Coastkeeper via U.S. Mail to San Diego Coastkeeper, Attn: Matt O'Malley 2825, Dewey Rd,  
16 Suite 207, San Diego, California 92106. Defendant shall provide Plaintiff with a copy of each such  
17 payment at the time it is made.

18 **VI. DISPUTE RESOLUTION**

19 36. This Court shall retain jurisdiction over this matter until the final termination date  
20 defined above for the purposes of implementing and enforcing the terms and conditions of this  
21 Consent Decree and adjudicating all disputes among the Settling Parties that may arise under the  
22 provisions of this Consent Decree. The Court shall have the power to enforce this Consent Decree  
23 with all available legal and equitable remedies, including contempt.

24 37. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution  
25 procedures of this Section by notifying all other Settling Parties in writing of the matter(s) in dispute.  
26 The Settling Parties shall then meet and confer in good faith (either telephonically or in person) in an  
27 attempt to resolve the dispute informally over a period of ten (10) business days from the date of the  
28

1 notice. The Settling Parties may elect to extend this time in an effort to resolve the dispute without  
2 court intervention.

3 38. If the Settling Parties cannot resolve a dispute by the end of meet and confer informal  
4 negotiations, the party initiating the dispute resolution provision may invoke formal dispute  
5 resolution by filing a motion before the United States District Court for the Southern District of  
6 California. The Settling Parties agree to request an expedited hearing schedule on the motion if  
7 requested by any Settling Party.

8 39. Burden of Proof.

9 a. Except as provided in subparagraph (b) below, the burden of proof for Formal  
10 Dispute Resolution shall be in accordance with applicable law.

11 b. In the event of any disagreement or dispute between Plaintiff and Defendant over  
12 the necessity or appropriateness of implementing any particular BMP or set of BMPs, Defendant shall  
13 bear the burden of demonstrating that its BMPs, collectively, constitute BAT/BCT for the CMS Facility,  
14 or that it is in compliance with the terms of this Consent Decree. Plaintiff shall not be required to prove  
15 that Defendant's BMPs do not constitute BAT/BCT.

16 40. Litigation costs and fees incurred in conducting the meet and confer or otherwise  
17 addressing and/or resolving any dispute, including an alleged breach of this Consent Decree, shall be  
18 awarded in accord with the standard established by Section 505 of the Clean Water Act, 33 U.S.C.  
19 §§1365 and 1319, and case law interpreting that standard.

20 41. Force Majeure. No Settling Party shall be considered to be in default in the performance  
21 of any of its obligations under this Consent Decree when performance becomes impossible due to  
22 circumstances beyond the Settling Party's control, including Force Majeure, which includes any act of  
23 god, war, fire, earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism,  
24 sabotage, or terrorism; restraint by court order or public authority or agency; inability to proceed due to  
25 pending litigation under the California Environmental Quality Act; action or non-action by, or inability  
26 obtain the necessary authorizations, approvals, or permits from, any governmental agency; or inability to  
27 obtain equipment or materials from the marketplace if such materials or equipment are not reasonably  
28 available, though the cost of such material or equipment is not a factor in whether it is reasonably

1 available. Impossibility and/or Force Majeure shall not include normal inclement weather, economic  
2 hardship, or inability to pay. Any party seeking to rely upon this paragraph to excuse or postpone  
3 performance shall have the burden of establishing that it could not reasonably have been expected to  
4 avoid the impossibility or Force Majeure event and which by exercise of due diligence has been unable  
5 to overcome the failure or performance. Delay in compliance with a specific obligation under this  
6 Consent Decree due to impossibility and/or Force Majeure as defined in this paragraph shall not excuse  
7 or delay compliance with any or all other obligations required under this Consent Decree.

8 a. If Defendant claims compliance was or is impossible, it shall notify Plaintiff in writing as  
9 soon as possible, but in no event more than five (5) business days of the date that Defendant learns of  
10 the event or circumstance that caused or would cause a violation of this Consent Decree (hereinafter  
11 referred to as the "Notice of Nonperformance").

12 b. Within ten (10) business days of sending the Notice of Nonperformance, Defendant shall  
13 send Plaintiff a detailed description of the reason for the nonperformance and the specific obligations  
14 under the Consent Decree that are or have been affected by the Force Majeure. It shall describe the  
15 anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or  
16 to be taken by Defendant to prevent or minimize the delay, the schedule by which the measures shall be  
17 implemented, and the anticipated date of compliance. Defendant shall adopt all reasonable measures to  
18 avoid and minimize such delays.

19 c. The Settling Parties shall meet and confer in good faith concerning the non-performance  
20 and, where the Settling Parties concur that performance was or is impossible due to an event or matter  
21 covered under the Force Majeure provisions of this Consent Decree, despite the timely good faith efforts  
22 of Defendant, new deadlines shall be established.

23 d. If Plaintiff disagrees with Defendant's Notice of Nonperformance, or in the event that the  
24 Settling Parties cannot timely agree on the terms of new performance deadlines or requirements, either  
25 party shall have the right to invoke the dispute resolution procedure pursuant to Article VI. In such  
26 proceeding, Defendant shall bear the burden of proving that any delay in performance of any  
27 requirement of this Consent Decree was caused or will be caused by impossibility and/or Force Majeure  
28 and the extent of any delay attributable to such circumstances.

1 **VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

2 42. CERF's Release. Upon the Effective Date of this Consent Decree, CERF, on its own  
3 behalf and on behalf of its current and former officers, directors, employees, and each of their  
4 successors and assigns, and its agents, attorneys, and other representatives releases all persons  
5 including, without limitation, CMS (and each of their direct and indirect parent and subsidiary  
6 companies and affiliates, and their respective current and former officers, directors, members,  
7 employees, shareholders, and each of their predecessors, successors, and assigns, and each of their  
8 agents, attorneys, consultants, and other representatives) from and waives all claims alleged in the  
9 Notice Letter and/or Complaint up to the termination of this Consent Decree.

10 43. CMS's Release. Upon the Effective Date of this Consent Decree, CMS, on its own  
11 behalf and on behalf of its current and former officers, directors, employees, members, and each of  
12 their successors and assigns, and their agents, attorneys, and other representatives releases CERF (and  
13 its current and former officers, directors, employees, members, parents, subsidiaries, and affiliates,  
14 and each of their successors and assigns, and its agents, attorneys, and other representatives) from and  
15 waives all claims which arise from or pertain to this action, including all claims for fees (including  
16 fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed for  
17 matters related to CERF's Notice Letter and Complaint up to the termination of this Consent Decree  
18 by the Court.

19 44. Nothing in this Consent Decree limits or otherwise affects either Party's right to  
20 address or take any position that it deems necessary or appropriate in any formal or informal  
21 proceeding before the State Board, Regional Board, EPA, or any other administrative body on any  
22 other matter relating to CMS's compliance with the Storm Water Permit or the Clean Water Act  
23 occurring or arising after the Effective Date of this Consent Decree.

24 **VIII. MISCELLANEOUS PROVISIONS**

25 45. No Admission of Liability. Neither this Consent Decree, the implementation of  
26 additional BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as  
27 a finding, adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be  
28 construed as an admission of violation of any law, rule, or regulation. CMS maintains and reserves all

1 defenses they may have to any alleged violations that may be raised in the future.

2 46. Construction. The language in all parts of this Consent Decree shall be construed  
3 according to its plain and ordinary meaning, except as to those terms defined in the Storm Water  
4 Permit, the Clean Water Act, or specifically herein.

5 47. Choice of Law. The laws of the United States shall govern this Consent Decree.

6 48. Severability. In the event that any provision, paragraph, section, or sentence of this  
7 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall  
8 not be adversely affected.

9 49. Correspondence. Unless specifically provided for in this Consent Decree, all notices  
10 required herein or any other correspondence pertaining to this Consent Decree shall be sent by U.S.  
11 mail or electronic mail as follows:

12 If to Plaintiff:

13 Coastal Environmental Rights Foundation  
14 Attn: Sara Kent  
15 1140 South Coast Highway 101  
Encinitas, California 92024

16 With a copy to

17 Livia Borak Beaudin  
18 Coast Law Group, LLP  
1140 South Coast Highway 101  
19 Encinitas, California 92024

20 If to CMS:

21 Diane Speigle  
22 California Metal Services, Inc.  
1428 W. Mission Road  
23 Escondido, CA 92029

24 With a copy to:

25 S. Wayne Rosenbaum  
26 Environmental Law Group LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

27 50. Notifications of communications shall be deemed submitted three (3) business days  
28 after having been sent via U.S. mail or the day of sending notification or communication by

1 electronic mail. Any change of address or addresses shall be communicated in the manner described  
2 above for giving notices.

3 51. Effect of Consent Decree. Except as provided herein, CERF does not, by its consent to  
4 this Consent Decree, warrant or aver in any manner that CMS's compliance with this Consent Decree  
5 will constitute or result in compliance with any federal or state law or regulation. Nothing in this  
6 Consent Decree shall be construed to affect or limit in any way the obligation of CMS to comply with  
7 all federal, state, and local laws and regulations governing any activity required by this Consent  
8 Decree.

9 52. Counterparts. This Consent Decree may be executed in any number of counterparts, all  
10 of which together shall constitute one original document. Telecopy, email of a .pdf signature, and/or  
11 facsimile copies of original signature shall be deemed to be originally executed counterparts of this  
12 Consent Decree.

13 53. Modification of the Consent Decree. This Consent Decree, and any provisions herein,  
14 may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the  
15 Settling Parties. If any Settling Party wishes to modify any provision of this Consent Decree, the  
16 Settling Party must notify the other Settling Party in writing at least twenty-one (21) days prior to  
17 taking any step to implement the proposed change.

18 54. Full Settlement. This Consent Decree constitutes a full and final settlement of this  
19 matter.

20 55. Integration Clause. This is an integrated Consent Decree. This Consent Decree is  
21 intended to be a full and complete statement of the terms of the agreement between the Settling  
22 Parties and expressly supersedes any and all prior oral or written agreements, covenants,  
23 representations, and warranties (express or implied) concerning the subject matter of this Consent  
24 Decree.

25 56. Authority. The undersigned representatives for Plaintiff and CMS each certify that  
26 he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions  
27 of this Consent Decree.

28 57. The Settling Parties certify that their undersigned representatives are fully authorized




1 to enter into this Consent Decree, to execute it on behalf of the Settling Parties, and to legally bind the  
2 Settling Parties to its terms.

3 58. The Settling Parties, including any successors or assigns, agree to be bound by this  
4 Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce  
5 its terms.

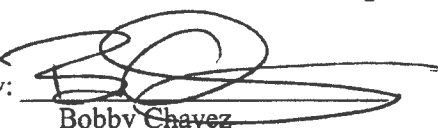
6 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the  
7 date first set forth below.

8 APPROVED AS TO CONTENT

9 Dated: 2/8/2018


10 By:   
11 Sara Kent  
Coastal Environmental Rights Foundation

12 Dated: 2/8/2018

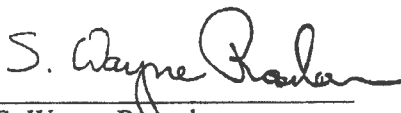
13 By:   
14 Bobby Chavez  
California Metal Services, Inc

15 APPROVED AS TO FORM

16 Dated: 2/8/2018

17 By:   
18 Livia Borak Beaudin  
Coast Law Group, LLP  
19 Attorney for Plaintiff

20 Dated: 2/9/2018

21 By:   
22 S. Wayne Rosenbaum  
Environmental Law Group LLP  
23 Attorney for CMS

24 **IT IS SO ORDERED.**

25 Date: \_\_\_\_\_

26 \_\_\_\_\_  
27 Hon. Nita L. Stormes  
28 United States Magistrate Judge